

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JIMMY SEO PETERSON,

Plaintiffs,

v.

CITY OF OMAK, MICHAEL
MORRISON, SEAN ISAAC,
DONNELLY TALLANT, and
MICHAEL WORDEN,

Defendants.

No. CV-10-31-LRS

**ORDER GRANTING
DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT**

On October 28, 2010, Defendant Worden filed a Motion For Summary Judgment (Ct. Rec. 12) which was noted for hearing without oral argument on December 17. On November 9, 2010, the remaining named Defendants filed a Motion For Summary Judgment (Ct. Rec. 18) which was noted for hearing without oral argument on December 29, 2010.

Plaintiff has not filed a response to either of these motions. Responses were due no later than 21 days after service of the motions. LR 7.1(c)(1) There is no stipulation or order of record extending the response time. A failure to timely file a memorandum of points and authorities in opposition to any motion may be considered by the court as consent on the part of the party failing to file such

1 memorandum to the entry of an order adverse to the party in default. LR 7.1(e).
2 Furthermore, pursuant to LR 56.1(d), in determining any motion for summary
3 judgment, the court may assume the facts claimed by the moving party are
4 admitted to exist except as and to the extent such facts are controverted by a
5 statement of material facts filed by the non-moving party. Plaintiff, the non-
6 moving party, has not filed a statement of material facts.

7 Based on LR 7.1(e) and the uncontroverted statements of material facts (Ct.
8 Rec. 16 and 19)¹ and memoranda of points and authorities (Ct. Rec. 13 and 22)
9 filed by the Defendants, said Defendants' Motions For Summary Judgment (Ct.
10 Rec. 12 and 18) are **GRANTED**. The undisputed facts establish as a matter of law
11 that Defendants did not use excessive force against the Plaintiff in violation of his
12 Eighth Amendment rights; did not violate his rights under the Americans With
13 Disabilities Act; and are not culpable of any act or omission giving rise to tort
14 liability under Washington law. Defendants are awarded judgment on all of the
15 federal and state law claims set forth in Plaintiffs' Complaint.

16 **IT IS SO ORDERED.** The District Executive is directed to enter judgment
17 accordingly and forward copies of the judgment and this order to counsel of
18 record. This file shall be closed.

19 **DATED** this 29th of December, 2010.

20 *s/Lonny R. Suko*

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LONNY R. SUKO
22 Chief United States District Judge
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27 ¹ As supported by the declarations of Defendants (Ct. Rec. 15 and 20) and
28 exhibits attached thereto.